

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

NGUYEN VO INC.,

Plaintiff,

v.

**CENTURY SURETY COMPANY, and
ROBERT FINLEY,**

Defendants.

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CIVIL ACTION NO. 4:21-cv-1475

CENTURY SURETY COMPANY’S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Century Surety Company (“Century”), and, in accordance with 28 U.S.C. §§ 1332, 1441, and 1446, and Federal Rule of Civil Procedure 81(c), files this, its Notice of Removal, and would show the Court the following:

INTRODUCTION

1. Plaintiff is Nguyen Vo Inc. (“Nguyen Vo”). Defendants are Century and Robert Finley (“Finley”).

2. On April 6, 2021, Nguyen Vo filed a lawsuit against Century and Finley styled as: Nguyen Vo Inc. v. Century Surety Company and Robert Finley, Cause No. 202120041, in the 127th Judicial District Court of Harris County, Texas (the “State Court Lawsuit”). The State Court Lawsuit is currently pending in said court.

3. Century files this Notice of Removal within the time period required by 28 U.S.C. § 1446(b).

BASIS FOR REMOVAL

4. Plaintiff, Nguyen Vo, upon information and belief, is a corporation organized and existing under the laws of the State of Texas. Defendant Century is an Ohio corporation with its principal place of business in Ohio. Upon information and belief, Defendant Finley is a Texas citizen.

5. On or about December 4, 2020, which was **prior** to the filing of the State Court Lawsuit, and pursuant to Tex. Ins. Code § 542A.006, Century sent to Plaintiff a written notice of election of legal responsibility as to Defendant Finley. This District Court has held that where an insurer makes an election before an insured files suit, no cause of action exists against the agent, and if the insured later names the agent as a non-diverse defendant the court may disregard that agent's citizenship for purposes of diversity jurisdiction. *Ramirez v. Allstate Vehicle & Prop. Ins. Co.*, 490 F. Supp. 3d 1092, 1102–03 (S.D. Tex. 2020). Therefore, by virtue of the **pre-suit** “542A election” made as to Defendant Finley, his citizenship may be disregarded for diversity purposes.

6. As Defendant Finley should have his citizenship disregarded based on the paragraph above, only the citizenships of Nguyen Vo and Century should be considered for diversity purposes. Because of this, and since there is diversity between Century, a non-forum defendant, and Nguyen Vo, a Texas corporation, there is complete diversity between Nguyen Vo and Century. *See* 28 U.S.C. § 1332(a).

7. The amount in controversy threshold is met as well as the State Court Lawsuit involves an amount in controversy in excess of \$75,000.00. *See* 28 U.S.C. § 1332(a). Indeed, Nguyen Vo states in the State Court Lawsuit that it is seeking damages claimed to be “over \$250,000.00 but not more than \$1,000,000.00, excluding interest statutory or punitive damages

and penalties, and attorney fees and costs.” Nguyen Vo also specifically alleges that “damage to Plaintiff’s Property is currently estimated at \$233,698.96.”

8. Venue is proper in this district under 28 U.S.C. § 1441(a) because the State Court Lawsuit where the action is been pending is located in this district.

9. Century will promptly file a copy of this notice of removal with the clerk of the state court where the action has been pending.

10. All pleadings, process, orders, and other filings in the state court action will be attached to this notice as required by 28 U.S.C. § 1446(a) as follows:

- (a) Harris County District Court docket for the State Court Lawsuit;
- (b) Plaintiff’s Original Petition filed in the State Court Lawsuit; and
- (c) Century’s Original Answer filed in the State Court Lawsuit, including the written notice of election of legal responsibility as to Defendant Robert Finley.

11. Pursuant to Southern District Local Rule LR81, this Notice of Removal has attached the following documentation (please note that overlapping documentation with paragraph 10 above is only attached to this Notice of Removal once):

- (a) All executed process in the case;
- (b) Pleadings asserting causes of action, e.g., petitions, counterclaims, cross actions, third-party actions, interventions and all answers to such pleadings;
- (c) All orders signed by the state judge;
- (d) The docket sheet;
- (e) An index of matters being filed; and
- (f) A list of all counsel of record, including addresses, telephone numbers and parties represented.

12. If any further pleadings have been filed with the court, Century will supplement this removal.

PRAYER

WHEREFORE, Defendant Century Surety Company asks the Court to remove the action referred to as *Nguyen Vo Inc. v. Century Surety Company and Robert Finley*, Cause No. 202120041, in the 127th Judicial District Court of Harris County, Texas, to this federal court.

Dated: May 3, 2021.

Respectfully submitted,

By: /s/ Robert J. Witmeyer
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**ATTORNEYS FOR DEFENDANT,
CENTURY SURETY COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of May, 2021, a true and correct copy of the foregoing document was served on counsel of record via electronic mail, and/or using the Court's ECF filing service:

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